

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/03/2008 has been entered.

Response to Amendment

Amendment received on 01/03/2008 is acknowledged and entered. Claims 1-21 have been canceled. New claims 22-39 have been added. Claims 22-39 are currently pending in the application.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a personal interview with an Applicant's Representative A. John Pate (Reg. No.: 36,234) on Tuesday, January 29, 2008.

The application has been amended as follows:

IN THE CLAIMS

1-21. (canceled)

22. (currently amended) A method to correct inoperability between elements components of a computer system, the method comprising:

identifying a first product, comprising hardware manufactured in a first, earlier, non-upgraded, configuration and a second, later, upgraded, configuration by a first supplier;

identifying a second product, available from a second supplier, independent from the first supplier, and comprising a software package specifying operability thereof with the second configuration and inoperability with the first configuration of the first product;

testing the second product to ~~discover a basis of~~ identify a solution providing operability thereof with the first ~~configuration~~; ~~defining the basis, the basis~~ configuration, the identified solution comprising at least one of a new software product distinct from the second product, an alternative configuration of the second product, a hardware manipulation of the first product, and a hardware exchange of at least one component of the first product; and

~~disclosing to~~ notifying at least one of the first and second suppliers of the existence of the identified solution providing operability of the second product with the first configuration.

23. (currently amended) The method of claim 22, further comprising offering the ~~basis~~ identified solution to at least one of the first supplier, the second supplier, and the public.

24. (currently amended) The method of claim 23, wherein offering comprises presenting at least one of an offer to license to a product embodying the ~~basis~~ identified solution and an offer to sell a product embodying the ~~basis~~ identified solution.

25. (currently amended) The method of claim 24, wherein ~~disclosing~~ notifying comprises ~~disclosing~~ privately notifying.

26. (currently amended) The method of claim 25, wherein testing is performed by ~~an independent entity~~ a third party, independent from the first and second suppliers.

27. (currently amended) The method of claim 26, wherein ~~disclosing~~ notifying is performed by the ~~independent entity~~ third party.

28. (currently amended) The method of claim 27, further comprising publicly disclosing ~~to the public~~ the existence of the identified solution providing operability of the second product with the first configuration.

29. (currently amended) The method of claim 22, wherein ~~disclosing~~ notifying comprises ~~disclosing~~ privately notifying.

30. (currently amended) The method of claim 22, wherein testing is performed by ~~an independent entity~~ a third party, independent from the second supplier.

31. (currently amended) The method of claim 22, wherein disclosing is performed by ~~an independent entity~~ a third party independent from the second supplier.

32. (currently amended) The method of claim 22, further comprising publicly disclosing ~~publicly~~ the existence of the identified solution providing operability of the second product with the first configuration.

33. (currently amended) A method to correct inoperability between ~~elements~~ components of a computer system, the method comprising:

identifying a first product comprising hardware, having a ~~legacy~~ non-upgraded configuration and an upgraded configuration, the upgraded configuration released after the ~~legacy~~ non-upgraded configuration, the ~~legacy~~ non-upgraded and upgraded configurations being provided by a first supplier;

identifying a second product comprising a software package specifying operability with the upgraded configuration and inoperability with the ~~legacy~~ non-upgraded configuration of the first product;

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obtaining ~~access to~~ the first product in the legacy non-upgraded configuration;
obtaining ~~use of~~ the second product;
testing the second product to ~~discover a basis of~~ identify a solution for operability thereof with the ~~legacy non-upgraded~~ configuration; ~~and~~
communicating to the second supplier the existence of the ~~basis of~~ identified solution for operability; ~~and~~
~~requesting of the second supplier to take a specified action to remedy the inoperability.~~
offering to the second supplier a set of options effective to remove the inoperability, the set of options comprising the identified solution for operability.

34. (currently amended) The method of claim 33, wherein testing is performed by ~~an independent entity~~ a third party, independent from the second supplier.

35. (currently amended) The method of claim 34, further comprising selecting and implementing by the second supplier at least one option of the set of options to remedy the inoperability, and wherein the communicating step is performed by the independent entity third party.

36. (currently amended) The method of claim ~~35~~ 34, wherein the ~~specified action comprises effecting~~ set of options is effective to provide operability of the second product with the ~~legacy non-upgraded~~ configuration.

37. (currently amended) The method of claim 36, further comprising ~~failing, by the second supplier, to take the specified action~~ verifying by the third party whether the second supplier has implemented at least one option of the set of options.

38. (currently amended) The method of claim 37, further comprising providing, by the ~~independent entity~~ third party to the second supplier, a motivation to ~~take the specified action~~ implement at least one option of the set of options.

39. (currently amended) The method of claim 38, wherein the motivation comprises:

identifying a legal ~~remedy~~ action available to at least one of the ~~independent entity~~ third party, the public, and a purchaser of the second product; and

~~taking steps toward implementing~~ initiating implementation of the legal ~~remedy action~~ against the second supplier.

Allowable Subject Matter

Claims 22-39 are allowed.

The following is an examiner's statement of reasons for allowance:

As per independent claims 22 and 33, the best prior art, Kobata (US 6,321,348) teaches a method for correcting computer hardware and software defects, comprising: providing, by a supplier, a product having an embedded defect causing the product to reject operation with associated products for interacting therewith; discovering the existence of the embedded defect; disclosing the existence; repairing the product by enabling operation of the product with the associated products.

However, Kobata fails to teach or fairly suggest that:

said providing a product includes identifying a first product, comprising hardware manufactured in a first, earlier, non-upgraded, configuration and a second, later, upgraded, configuration by a first supplier; and identifying a second product, available from a second supplier, independent from the first supplier, and comprising a software package specifying operability thereof with the second configuration and inoperability with the first configuration of the first product; and that

said enabling operation of the product with the associated products includes testing the second product to identify a solution providing operability thereof with the first configuration, the identified solution comprising at least one of a new software product distinct from the second product, an alternative configuration of the second product, a hardware manipulation of the first product, and a hardware exchange of at least one component of the first product, and notifying at least one of the first and second suppliers of the existence of the identified solution providing operability of the second product with the first configuration.

The best foreign art, TAHO et al. (GB 2361787 A), while teaching fixing incompatibility techniques between software programs and incompatible architectures, fails to teach or fairly suggest that:

enabling operation of the product with the associated products includes testing the second product to identify a solution providing operability thereof with the first configuration, the identified solution comprising at least one of a new software product distinct from the second product, an alternative configuration of the second product, a hardware manipulation of the first product, and a hardware exchange of at least one component of the first product, and notifying at least one of the first and second suppliers of the existence of the identified solution providing operability of the second product with the first configuration.

The best NPL prior art, Liability For Product Incompatibility (Liability) which appears to be published in September 1998, while teaching discovering incompatibility issues between software or hardware products manufactured by a supplier, fails to teach or fairly suggest that:

providing a product includes identifying a first product, comprising hardware manufactured in a first, earlier, non-upgraded, configuration and a second, later, upgraded, configuration by a first supplier; and identifying a second product, available from a second supplier, independent from the first supplier, and comprising a software package specifying operability thereof with the second configuration and inoperability with the first configuration of the first product; and that

enabling operation of the product with the associated products includes testing the second product to identify a solution providing operability thereof with the first configuration, the identified solution comprising at least one of a new software product distinct from the second product, an alternative configuration of the second product, a hardware manipulation of the first product, and a hardware exchange of at least one component of the first product, and notifying at least one of the first and second suppliers of the existence of the identified solution providing operability of the second product with the first configuration.

The remaining dependent claims are considered allowable, as they are dependent and based off of an allowable independent claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submission should be clearly labeled "Comments on Statement of Reason for Allowance".

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/
Primary Examiner, Art Unit 3628
01/30/2008